IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 109 OF 2006
IN
ARBITRATION PETITION NO.358 OF 2005
IN
AWARD PASSED ON 09/06/2005

1. Nilopher S. Shroff & Anr.] .. Appellants (Ori.Resp.1 & 2)

Versus

1. Mr. Jamshed Ardeshir Maswa & 2 ors.] .. Respondents (Ori.Petitioner & Resp.No.3 and 4)

Ms. Shraddha Hemdev i/b M/s. Makhija & Associates for the appellants.

Mr. Roop Vasudeo for the respondent No.1.

Mr. D.D. Madan with T. Cooper and Sunita Masani i/b M/s. N.C. Dalal & Co. for respondents No.3 and 4.

CORAM: R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED: 02ND MARCH, 2006

P.C. :

. Heard Ms. Shraddha Hemdev, the learned counsel for the appellants and perused the order dated 7th December, 2005, passed by the learned Single Judge.

2. The learned Single Judge, while setting aside the Award, held that the foundation of the Award that estate which Perin Banoo got under the Will of Rustom was a life estate was not well founded. While holding

so, the learned Single Judge referred to paragraphs 4, 5, 6, 7 and 8 of the Will executed by deceased Rustom.

3. The learned Single Judge considered the Partnership Deed of the year 1970 wherein Rustom was one of the Partners and found that there was no agreement to the contrary between the Partners on the point of dissolution of the firm and that upon death of Rustom on 26th November, 1975, the then Partnership of M/s. Bastani & Co. stood dissolved. Perin Banoo was admitted to the Partnership with effect from 27th November, 1975 under the Deed of Partnership dated 23rd August, 1976. Perin Banoo died on 1st January, 2000. Clause of the Partnership Deed dated 23rd August, 1976 reads thus:

> "7. As a condition precedent to the admission of Perin Banoo as a partner in the firm, it is agreed by Perin Banoo that her share in the firm shall neither be heritable nor transferable. If Perin Banoo desires to sell her share during her lifetime, she shall offer it for sale and sell it only to their partners of the firm or any of them for a fixed amount of Rs.25,000/-. If they are not ready and willing to purchase it, then the firm shall stand dissolved. If Perin Banoo continues to a partner in the firm till her death then her legal representatives shall sell her share for a sum of Rs.25,000/- to the two working partners of the firm or any one or more of them. If the then partners of the firm or any of them are not ready and willing to purchase the said entire share, then the firm shall stand dissolved."

4. It would thus be seen that Clause 7 of the Partnership Deed provides that upon death of Perin Banoo the firm shall not dissolve automatically as provided under Section 42, but upon happening of the event as set out in the Clause. Insofar as present appellants are concerned, their entitlement to the share in the Partnership Firm as heirs of Perin Banoo cannot go beyond what is stated in Clause 7 as it remains operative. Curiously, the Arbitrator has not held that the present appellants are entitled as heirs of Perin Banoo. On the other hand, the Arbitrator has held the present appellants as heirs of Rustom and passed an Award in favour of the present appellants which was wholly illegal in view of the partnership agreement dated 23rd April, 1976 and, in our view, rightly set aside by the learned Single Judge.

5. The learned counsel for the appellants relied upon judgment of the Supreme Court in the case of **M/s. Allen Berry & Co. Pvt. Ltd. Vs. The Union of India AIR 1971, S.C., 695** in support of her contention that the decision of the Arbitrator upon the law and the facts is binding and could not have been set aside. In our view, the judgment of the Supreme Court in the case

of **M/s. Allen Berry & Co.** does not help the case of the appellants as in the present case, the learned Single Judge has given good reasons for setting aside the Award passed by the Arbitrator in exercise of his powers under Section 34 of the Arbitration & Conciliation Act, 1996.

6. We find no justifiable ground to interfere with the order of the learned Single Judge.

7. Appeal is accordingly dismissed in limine.

Sd/-
[R.M. LODHA, J.]

Sd/-
[ANOOP V. MOHTA, J.]